

DBD-CV20-6036097-S : SUPERIOR COURT

ROBINSON, MARCIA, ADMINISTRATRIX : JUDICIAL DISTRICT DANBURY  
OF THE ESTATE OF MANUELA MARIA  
MACEDO SILVEIRA

VS. : AT DANBURY

TOWN OF BETHEL BOARD : JUNE 3, 2020  
OF EDUCATION  
TOWN OF BETHEL

**MOTION TO DISMISS/OBJECTION RE PETITION FOR  
PRE SUIT BILL OF DISCOVERY**

The Respondents hereby seek dismissal/denial of the Complaint/Petition for Pre Suit Bill of Discovery bearing a Return Date of May 26, 2020. As set forth below, the Petition does not satisfy the requisite standard to warrant circumventing the normal course of discovery.

**I. Petitioner's Allegations**

Pursuant to Conn. Gen. Stat. § 52-156 et seq., Petitioner seeks pre-suit depositions of the keeper of records for R.M.T Johnson Elementary School and the Bethel Middle School along with production of records at said depositions.

In the Petition, the Petitioner states that from September of 2015 through July 6, 2019, the decedent was a student at R.M.T. Johnson Elementary School and Bethel Middle School in the Bethel public school system, and was cared for/treated by agents for both schools for mental health. The Petition states that on July 6, 2019, the decedent died by means of suicide at her home.

The Petitioner asserts that the decedent's injuries may be caused by the negligence of the Town of Bethel and/or its Board of Education.

In brief, the Petitioner states that in response to a request for the decedent's school records, she received records which she claims are not complete. She further states that she raised this issue with the Respondents and was advised that she was provided the complete school records for the decedent. See ¶¶ 9-12.

Despite these representations, Petitioner seeks pre-suit depositions of record keepers along with production of the entire school record.

## **II. Law and Argument**

Conn. Gen. Stat. § 52-156 “. . . appears to be a codification of the ancient bill in equity to perpetuate testimony . . . The sole purpose of such a suit is to perpetuate the testimony. To sustain a bill of this character, it must appear that the facts which the plaintiff expects to prove by the testimony of the witnesses sought to be examined will be material in the determination of the matter in controversy; that the testimony will be competent evidence; that depositions of the witnesses cannot be taken and perpetuated in the ordinary methods prescribed by law, because the then condition of the suit (if one is pending) renders it impossible, or (if no suit is then pending) because the plaintiff is not in a position to start one in which the issues may be determined; and that taking of the testimony on bill in equity is made necessary by the danger that it may be lost by delay. The **procedure is confined to cases where extraordinary remedy is necessary in the interests of justice and there is a substantial risk that the testimony will be lost unless the extraordinary**

**relief is granted.”** Petition of Christensen, 25 Conn. Supp. 271, 273, 1964 Conn. Super. LEXIS 152, \*2-3, 202 A.2d 834, 836 (emphasis added; internal quotations and citations omitted).

Moreover, “the procedure amounts, in substance, to 'discovery before suit.' It is a use which should **not be permitted to be abused by broad 'fishing expeditions' to enable a party to ascertain whether or not he has a cause of action or to assist him in framing a complaint. It should be carefully limited to situations . . . where the ends of justice clearly require its use.** If there were not such a limitation, there would be no need for the existing provisions by statute and rule providing for the taking of deposit[i]ons under clearly defined special circumstances.” Id. at 274 (emphasis added).

Applying this legal standard, the court in *Petition of Christensen* denied the petition, explaining: “There appears no reason why the petitioner cannot immediately commence suit on whatever cause of action he claims and therein proceed in the usual manner. He has demonstrated no unusual circumstance which, in view of the objections of the respondent, justifies the extraordinary order which he seeks. **To grant such a petition as this would open the door to an unlimited process of permitting depositions before suit** for the purpose of determining whether a cause of action does exist and even developing a cause of action. The deposition being taken before suit and before issues are framed, it would be impossible to determine questions of relevancy or materiality.” Id. (emphasis added); see also Geomatrix Sys., LLC v. Waste Eng’g, Inc., 2009 Conn. Super. LEXIS 318, \*14 (denying bill of discovery and explaining that “. . . the remedy provided by §52-156 should only be used when the interests of justice require the implementation of this

extraordinary remedy to eliminate ‘a substantial risk that the testimony will be lost’ unless the statutory relief is granted. Petition of Christensen, supra, 25 Conn.Sup. 273. As the plaintiff has not met the fourth Christensen prong by demonstrating such ‘a substantial risk that the testimony will be lost’ unless the statutory relief is granted, the use of the bill of discovery is inapposite under the circumstances of the present case.”).

Ultimately, the court’s reasoning in dismissing a similar petition for pre-suit discovery in the case of *In re Mancini* is instructive:

It would be entirely improper for this court to circumvent the normal orderly procedures of discovery based solely on the petitioner's suspicion that evidence is being kept from him in such a manner. See, also, Journal Publishing Co. v. Hartford Courant Co., 261 Conn. 673, 804 A.2d 823 (2002).

In sum, granting this petition would not "prevent a failure or delay of justice," a prerequisite for relief under General Statutes §52-156a(a)(3). The court sees nothing of substance that distinguishes this case from any other in which the plaintiff thinks he may have a cause of action but lacks all the information he needs to prove his case before commencing his lawsuit. The petition is therefore dismissed.

*In re Mancini*, 2007 Conn. Super. LEXIS 3128, \*10.

Applying the foregoing precedents and legal principles, the Petition in the instant matter does not set forth a proper basis to permit the pre-suit discovery requested.

### **III. Conclusion**

For all the foregoing reasons, the Petition for Pre Suit Bill of Discovery should be dismissed/denied.

THE RESPONDENTS,  
TOWN OF BETHEL BOARD OF EDUCATION  
and TOWN OF BETHEL

/s/ 305505\_\_\_\_\_  
JAMES G. WILLIAMS, ESQ.  
RYAN J. MCKONE, ESQ.  
Williams Walsh & O'Connor, LLC

**CERTIFICATION**

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

KELLY FERRARO, ESQ.  
BERKOWITZ AND HANNA LLC  
2 CORPORATE DRIVE  
3RD FLOOR  
SHELTON, CT 06484  
kferraro@theberkowitzlawfirm.com

/s/\_\_\_\_\_  
RYAN J. MCKONE  
COMMISSIONER OF THE SUPERIOR COURT